

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**ZUHDIJA OMEROVIC,
No. 077685306,**

Petitioner,

v.

Case No. 17-cv-306-DRH

DHS/ICE,

Respondent.

MEMORANDUM AND ORDER

HERNDON, District Judge:

This matter is before the Court for case management. On June 8, 2017, Petitioner was ordered to either pay the \$5.00 filing fee for this action brought pursuant to 28 U.S.C. § 2254, or submit a motion for leave to proceed *in forma pauperis*, no later than June 28, 2017. (Doc. 3). Petitioner was warned that if he failed to comply with the Court's order, his case would be dismissed.

The June 28 deadline has come and gone, and Petitioner has failed to respond to the order in this case in any way. However, he did submit a new Petition received by the Court on June 8, 2017, this time invoking 28 U.S.C. § 2241 as authority for habeas relief. That Petition was docketed under Case No. 17-cv-605-DRH; Petitioner paid the \$5.00 filing fee in full for the new action.

IT IS HEREBY ORDERED that this action is **DISMISSED** for Petitioner's failure to comply with an order of this Court. FED. R. CIV. P. 41(b); *see generally*

James v. McDonald's Corp., 417 F.3d 672, 681 (7th Cir. 2005); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997). The dismissal is without prejudice to Petitioner pursuing his claims in the new action captioned *Omerovic v. Madigan, et al.*, Case No. 17-cv-605-DRH (S.D. Ill. filed June 8, 2017).

The Clerk is **DIRECTED** to **CLOSE THIS CASE** and enter judgment accordingly.

Petitioner's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$5.00 remains due and payable. *See Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If Petitioner wishes to appeal this dismissal, he may file a notice of appeal with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* should set forth the issues Petitioner plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Petitioner does choose to appeal, he will be liable for a portion of the \$505.00 appellate filing fee (the amount to be determined based on his inmate trust fund account records for the past six months) irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed

no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

IT IS SO ORDERED.

Signed this 13th day of July, 2017.

David R. Herndon



Digitally signed by
Judge David R.
Herndon

Date: 2017.07.13
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UNITED STATES DISTRICT JUDGE